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No. 75-1509

In the Supreme Court of the United States

OCTOBER TERM, 1975

RANDOLPH PHILLIPS, ETC., PETITIONER

v.

GERALD R. FORD, PRESIDENT OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, as chairman of the "Committee for Fair Play for Voters," on May 15, 1974, filed a complaint *pro se* in the United States District Court for the District of Columbia on behalf of himself and all similarly situated voters, alleging that then-President Nixon and Vice President Ford and former Vice President Agnew had gained their offices by fraudulent means. Petitioner additionally alleged that then-Vice President Ford was ineligible to be nominated Vice President by virtue of the Emoluments Clause of the Constitution, Article I, Sec. 6, Cl. 2, because the salary of that office had been increased while Mr. Ford was a member of the House of Representatives. The complaint sought, *inter alia*, a judicial declaration that the 1972 Presidential election was null and void, and an injunction prohibiting Messrs. Nixon and Ford from continuing in office (Pet. App. A-4 to A-5).

Defendants Nixon and Agnew apparently were never served and were thus not made parties to the suit (see petitioner's brief in the court of appeals, p. 4). The United States Attorney appeared for Mr. Ford and moved to dismiss the action on the grounds that petitioner was without standing to sue, and that the validity of the presidential election was a non-justiciable political question expressly committed to the Congress by Article II, Sec. 4, of the Constitution.

The district court, relying on the latter ground, granted defendant Ford's motion to dismiss for lack of subject matter jurisdiction (Pet. App. A-1 to A-3). The court of appeals affirmed *per curiam* (Pet. App. A-3 to A-6), on the ground that petitioner lacked standing to sue.[1]

The court of appeals is correct; petitioner's interest in respondent's eligibility to serve as Vice President and as President is merely a general one, common to all members of the public, and insufficient to invoke the judicial power. Petitioner therefore lacks standing to sue. See, *e.g.*, *Ex parte Lévitt*, 302 U.S. 633; *United States* v. *Richardson*, 418 U.S. 166, 176-179; *Schlesinger* v. *Reservists Committee to Stop the War*, 418 U.S. 208, 220.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JUNE 1976.

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[1]The court of appeals expressly did not reach the political question issue (see Pet. App. A-5).

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